

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

CHARLES D'ARY,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

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Case No. 4:07CV02042 ERW

**MEMORANDUM AND ORDER**


This matter comes before the Court on Charles D'Ary's Application for Certificate of Appealability [doc. #11]. On July 31, 2008, an Order [doc. #8] was entered, denying Petitioner's Motion to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody [doc. #1] pursuant to 28 U.S.C. § 2255.

A certificate of appealability will be issued only if the applicant has made a substantial showing of the denial of a constitutional right and has indicated which specific issue or issues satisfy the showing required. 28 U.S.C. § 2253(c)(2) & (3). Additionally, "the petitioner 'must demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issues [in a different manner]; or that the questions are adequate to deserve encouragement to proceed further.'" *Randolf v. Kemna*, 276 F.3d 401, 403 n.1 (8th Cir. 2002) (internal citations omitted). Mr. D'Ary has failed to meet this burden.

Accordingly,

**IT IS HEREBY ORDERED** that Charles D'Ary's Application for Certificate of Appealability [doc. #11] is **DENIED**.

Dated this 30th Day of October, 2008.

  
E. RICHARD WEBBER  
UNITED STATES DISTRICT JUDGE